

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 977(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 977(b). This opinion has not been certified for publication or ordered published for purposes of rule 977.
--

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SIXTH APPELLATE DISTRICT

SCOTT A. MACDONALD,

H025237

Plaintiff and Appellant,

(Santa Clara County  
Superior Court  
No. CV 792797)

v.

ASPECT DEVELOPMENT, INC. et al.,

ORDER MODIFYING OPINION

Defendants and Respondents.

\_\_\_\_\_/

THE COURT:

It is ordered that the opinion filed herein on March 30, 2004, be modified as follows.

On page 8, second full paragraph, the quote on lines two through five should read:

“he must present evidence that would require a reasonable trier of fact *not* to find any underlying material fact more likely than not — otherwise, *he* would not be entitled to judgment *as a matter of law*, but would have to present *his* evidence to a trier of fact.”

This modification does not affect the judgment

Dated:

---

Mihara, J.

---

Rushing, P.J.

---

Wunderlich, J.